

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
NORTHERN DIVISION**

RALPH WOODS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:22-CV-83 HEA
	)	
CORTEX TRANSPORT, INC.,	)	
	)	
Defendant,	)	
	)	

**OPINION, MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiff's Motion for Leave to File Amended Complaint and Add Jarvy Vidal as a Defendant, [Doc. No. 53]. Defendant opposes the motion. For the reasons set forth below, the motion will be denied.

**Background**

Plaintiff brought this action to recover damages which allegedly resulted from a vehicular collision wherein a tractor trailer driven by Jarvy Vidal, an employee of Defendant, collided with Plaintiff's vehicle. Plaintiff's Complaint originally named Vidal as a defendant, however, on July 10, 2023, Judge White dismissed Vidal without prejudice for failure to effectuate service.

Plaintiff now seeks to add Vidal back into this action as a defendant. Previously, Plaintiff was unable to serve Vidal because it was believed Vidal no

longer lived in the United States. He now believes Vidal is again living in the United States. Defendant opposes the motion arguing Plaintiff is too late in seeking to add Vidal.


### **Discussion**

The Missouri's Saving's statute permits the commencement of a new action within one year of dismissal of the prior action. Mo. Ann. Stat. § 516.230. Plaintiff does not ask the Court to apply equitable tolling in this case and find that the statute of limitations will not bar his claim. The Court declines to act *sua sponte*. “Courts have generally reserved the remedy of equitable tolling for circumstances which were truly beyond the control of the plaintiff.” *Ousley v. Rescare Homecare*, No. 4:13-CV-00898-SPM, 2013 WL 5966050 (E.D. Mo. Nov. 8, 2013)(citing *Hill v. John Chezik Imps.*, 869 F.2d 112, 1124 (8th Cir. 1989)). Without any basis for considering equitable tolling, the Court concludes Plaintiff’s time for refiling the action against Vidal is barred by Section 516.230. Plaintiff has not argued that there was any impediment to him complying with the Missouri statute of limitation and has not indicated that anything prevented him from filing in Missouri within Missouri's statute of limitation. Therefore, equitable tolling will not be applied in this case.

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's Motion for Leave to File Amended Complaint and Add Jarvy Vidal as a Defendant, [Doc. No. 53], is **DENIED**.

Dated this 2nd day of December, 2024.

  
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HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE